

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PETER FALL



Appeal No. 2006-0105
Application 09/681,441

ON BRIEF

Before FRANKFORT, CRAWFORD and BAHR, *Administrative Patent Judges*.

FRANKFORT, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 2, 3, 5, 6 and 8 through 20, all of the claims remaining in the application. Claims 4 and 7 have been cancelled. Subsequent to the final rejection the examiner has withdrawn all of the rejections in the final rejection except that directed to claims 1 through 3, 5 and 8 through 17 under 35 U.S.C. § 103(a) based on Bayer (German 31 40329, dated April 21, 1983) in view of Wolpert (U.S. 6,082,219, issued July 4, 2000). Although the examiner has not further commented in the answer on the status of

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claims 6 and 18 through 20, we note that they are no longer rejected by the examiner, thus, the appeal as to those claims is dismissed.

Appellant's invention relates to a pedal arrangement in a vehicle cab space that eliminates the risk of the driver's foot being clamped and held fast between the underside of the pedal and the floor of the vehicle cab in a collision that has caused displacement of a brake servo unit located outside the vehicle cab in towards the cab space. Independent claims 1 and 8 are representative of the subject matter on appeal and a copy of those claims can be found in the "Claims Appendix" attached to appellant's brief.

As was noted above, the only rejection remaining on appeal is that of claims 1 through 3, 5 and 8 through 17 under 35 U.S.C. § 103(a) based on Bayer (German 31 40329, dated April 21, 1983) in view of Wolpert (U.S. 6,082,219, issued July 4, 2000).

Rather than attempt to reiterate the examiner's commentary with regard to the above-noted obviousness rejection and the conflicting viewpoints advanced by appellant and the examiner regarding that rejection, we make reference to the final rejection (mailed July 7, 2004) and the answer (mailed April 20, 2005) for the examiner's reasoning in support of the rejection, and to appellant's brief (filed January 31, 2005) and reply to the examiner's answer (filed June 20, 2005) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we have made the determination that the examiner's rejection will not be sustained. Our reasons follow.

In the obviousness rejection before us on appeal, the examiner contends that Bayer teaches the invention substantially as claimed, except that the motion transmitting element (10) associated with the clutch pedal of Bayer is disposed partially instead of wholly within the vehicle cab space. The examiner looks to the brake pedal arrangement of the Wolpert patent to supply that deficiency, contending that Wolpert teaches to rearrange the motion transmitting element (14) of a brake pedal (8) to be disposed wholly within a vehicle cab space in order to cause a swiveling of the pedal (8) towards the front wall (4) and thus away from the foot space at the front of the vehicle in order to decrease the likelihood of injuries to the feet of the driver. The examiner concludes that it would have been obvious to one of ordinary skill in the art at the time of appellant's invention "to rearrange Bayer's motion transmitting element to be disposed *wholly instead of partially* within the cab space in order to cause a swiveling of the pedal 8 [sic] towards the

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front wall 4 [sic], thus away from the foot space at the front of the vehicle to decrease the likelihood of injuries to the feet of the driver as suggested by Wolpert" (final rejection, pages 9-10).

Like appellant, we find no teaching, suggestion or motivation for the wholesale rearrangement and reconstruction of the self-adjusting clutch pedal mechanism seen in Bayer in the manner urged by the examiner. In our view, the examiner has improperly used appellant's own disclosure and hindsight in an attempt to reconstruct the claimed invention from disparate teachings in the prior art. The systems in Bayer and Wolpert are highly distinct from one another, address totally different problems, and clearly would not have provided one of ordinary skill in the art with any reason or suggestion to modify one in view of the other in the particular manner posited by the examiner.

In light of the foregoing, the rejection of independent claims 1 and 8, and of claims 2, 3, 5 and 9 through 17 which depend therefrom, under 35 U.S.C. § 103(a) will not be sustained. Thus, the decision of the examiner is reversed

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Application 09/839,037

REVERSED

Charles E. Frankfort
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Administrative Patent Judge)
Muriel E. Crawford)
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Administrative Patent Judge) APPEALS
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INTERFERENCES
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Appeal No. 2006-1025
Application 09/978,957

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